



255413

PHYSICAL DOCUMENT

LPS-n255413-v1

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND CIVIL PENALTIES

Author: Davila, Brittany

Document Type: FILINGS

LSA(s):

Co-Counsel:

Counsel LSA(s):

Distribution List: Davila, Brittany (ENRD);Lattin, Sue (ENRD);Rose, Robert (ENRD);Reed, Jason (ENRD);True, Michael (ENRD);Goldsmith, Reese (ENRD)

Fileroom: LPS - Main Justice

DJ#:

Case Name:

Court: CA N.D. Cal.; 9th Cir.

Notes: SCANNED/UNASSIGNED - CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE V. MENDOCINO FOREST PRODUCTS
COMPANY, LLC

Double-Sided: Y

Received Date: 3/29/2017

Urgent:

Oversize:

Bound Document:

3806062
B4

LP3

ENRD

LAW OFFICES OF
ANDREW L. PACKARD

245 KENTUCKY STREET, SUITE B3, PETALUMA, CA 94952

PHONE (707) 763-7227 FAX (707) 763-9227

INFO@PACKARDLAWOFFICES.COM

March 9, 2017

Via First Class Mail

Jeff Sessions
U.S. Attorney General
950 Pennsylvania Ave. N.W.
Washington, D.C. 20530-0001

Ms. Scott Pruitt, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. N.W.
Washington, D.C. 20460

Mr. Jared Blumenfeld, Administrator
U.S. E.P.A. – Region 9
75 Hawthorne Street
San Francisco, CA 94105

DEPT. OF JUSTICE - ENRD
ENVIRONMENT DIVISION
17 MAR 28 PM 1:15

Re: *California Sportfishing Protection Alliance v. Mendocino Forest
Products Company LLC*; USDC, Northern District of California, Case
No. 3:17-cv-01223; Courtesy Copy of Complaint

Dear Sirs:

This firm represents Plaintiff in the above-captioned matter. Pursuant to 40 C.F.R. § 135.4, enclosed please find a courtesy copy of the complaint filed yesterday in the Northern District of California. Please contact me at (707) 787-7033 if you should have any questions. Thank you.

Very Truly Yours,



Andrew L. Packard
Attorneys for Plaintiff
California Sportfishing Protection Alliance

ANDREW L. PACKARD (State Bar No. 168690)
WILLIAM N. CARLON (State Bar No. 305739)
LAW OFFICES OF ANDREW L. PACKARD
245 Kentucky Street, Suite B3
Petaluma, CA 94952
Tel: (707) 763-7227
Fax: (707) 763-9227
andrew@packardlawoffices.com
wncarlon@packardlawoffices.com

REED W. SUPER (State Bar No. 164706)
SUPER LAW GROUP, LLC
180 Maiden Lane, Suite 603
New York, New York 10038
Tel: (212) 242-2355
Fax: (855) 242-7956
reed@superlawgroup.com

Attorneys for Plaintiff
CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE,)	Case No.
)	
Plaintiff,)	COMPLAINT FOR DECLARATORY AND
)	INJUNCTIVE RELIEF AND CIVIL
v.)	PENALTIES
)	
MENDOCINO FOREST PRODUCTS COMPANY, LLC,)	(Federal Water Pollution Control Act, 33 U.S.C.
)	§§ 1251-1387)
Defendant.)	

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE ("CSPA"), by and through its
counsel, hereby alleges:

I. JURISDICTION AND VENUE

1. This is a civil suit brought under the citizen suit enforcement provision of the Federal
Water Pollution Control Act, 33 U.S.C. §§ 1251-1387 (the "Clean Water Act", the "CWA" or "the
Act") against Mendocino Forest Products Company, LLC ("Defendant"). This Court has subject matter

jurisdiction over the parties and the subject matter of this action pursuant to Section 505(a)(1) of the Act, 33 U.S.C. § 1365(a), and 28 U.S.C. § 1331 (an action arising under the laws of the United States). Specifically, this action arises under Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A) (citizen suit to enforce effluent standard or limitation). The relief requested is authorized pursuant to 33 U.S.C. § 1365(a) (injunctive relief), 1319(d) (civil penalties), and 28 U.S.C. §§ 2201–2202 (power to issue declaratory relief in case of actual controversy and further necessary relief based on such a declaration).

2. On January 4, 2017, Plaintiff provided written notice to Defendant, via certified mail, of Defendant’s violations of the Act (“Notice Letter”), and of its intention to file suit against Defendant, as required by the Act. *See* 33 U.S.C. § 1365(b)(1)(A); 40 C.F.R. § 135.2(a)(1). Plaintiff mailed a copy of the Notice Letter to the Administrator of the United States Environmental Protection Agency (“EPA”); the Administrator of EPA Region IX; the Executive Director of the State Water Resources Control Board (“State Board”); and the Executive Officer of the Regional Water Quality Control Board, North Coast Region (“Regional Board”), pursuant to 40 C.F.R. § 135.2(a)(1). A true and correct copy the Notice Letter is attached hereto as **Exhibit A**, and is incorporated by reference.

3. More than sixty days have passed since Plaintiff served the Notice Letter on Defendant and the agencies. Plaintiff is informed and believes, and thereupon alleges, that neither the EPA nor the State of California has commenced nor is diligently prosecuting a court action to redress the violations alleged in this Complaint. This action’s claims for civil penalties are not barred by any prior administrative penalty under Section 309(g) of the Act, 33 U.S.C. § 1319(g).

4. Venue is proper in the Northern District of California pursuant to Section 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the sources of the violations are located within this District. Venue is also proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in this District. Intra-district venue is proper in San Francisco, California, because the sources of the violations are located within Mendocino County.

II. INTRODUCTION

5. This Complaint seeks relief for Defendant’s violations of the CWA at the 176-acre saw mill (“the Facility”) located at 850 Kunzler Ranch Road, Ukiah, California. Defendant discharges

1 pollutant-contaminated storm water from the Facility into the Russian River and into Hensley Creek,
2 which drains into the Russian River ("Impacted Waters"). Hensley Creek and the Russian River are
3 waters of the United States within the meaning of the Clean Water Act. Defendant is in violation of
4 both the substantive and procedural requirements of the CWA.

5 6. Defendant's discharges of polluted storm water from the Facility violate Section 301 of
6 the Act, which prohibits the discharge of storm water associated with industrial activities to waters of
7 the United States except in compliance with the terms of a National Pollutant Discharge Elimination
8 System ("NPDES") permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342. These
9 violations are ongoing and continuous.

10 7. Defendant's discharges of polluted storm water from the Facility violate the State of
11 California's General Industrial Permit for storm water discharges, State Water Resources Control Board
12 ("State Board") Water Quality Order No. 91-13-DWQ, as amended by Water Quality Order No. 92-12-
13 DWQ, Water Quality Order No. 97-03-DWQ, and Water Quality Order No. 14-0057-DWQ, NPDES
14 General Permit No. CAS000001 (hereinafter "General Permit" or "Permit"). Defendant's violations of
15 the permitting, filing, monitoring, reporting, discharge and management practice requirements, and other
16 procedural and substantive requirements of the General Permit and the Act are ongoing and continuous.

17 8. The failure on the part of industrial facility operators, such as Defendant, to apply for and
18 comply with the General Permit is recognized as a significant cause of the continuing decline in water
19 quality of receiving waters, such as the Russian River. The general consensus among regulatory
20 agencies and water quality specialists is that storm water pollution amounts to more than half the total
21 pollution entering the aquatic environment each year. With every rainfall event, hundreds of thousands
22 of gallons of polluted storm water originating from industrial facilities discharge to the Impacted
23 Waters.

24 **III. PARTIES**

25 9. Defendant Mendocino Forest Products Company, LLC is a Delaware corporation doing
26 business in California.

27 10. Defendant owns and operates the Facility, an approximately 176-acre saw mill located at
28

1 850 Kunzler Ranch Road, Ukiah, California.

2 11. Defendant's primary industrial activities at the Facility include log storage and handling,
3 milling of lumber, lumber planing, fenceline operations, wood surface protection, lumber drying, lumber
4 storage and shipping, maintenance of the manufacturing and rolling stock equipment and systems, and
5 wood treating.

6 12. Plaintiff CSPA is a non-profit public benefit corporation organized under the laws of
7 California, with its main offices in Stockton, California. CSPA is dedicated to the preservation,
8 protection, and defense of the environment, wildlife, and natural resources of California waters,
9 including the waters into which Defendant discharges polluted storm water. To further its goals, CSPA
10 actively seeks federal and state agency implementation of state and federal water quality laws, including
11 the CWA, and as necessary, directly initiates enforcement actions on behalf of itself and its members.

12 13. Members of CSPA, including citizens, taxpayers, property owners, and residents, live,
13 work, travel and recreate on and near the Impacted Waters, into which Defendant causes pollutants to be
14 discharged. These members of CSPA use and enjoy the Impacted Waters for recreational, educational,
15 scientific, conservation, aesthetic and spiritual purposes. Defendant's discharges of storm water
16 containing pollutants impairs each of those uses. Thus, the interests of CSPA's members have been, are
17 being, and will continue to be adversely affected by Defendant's failure to comply with the Clean Water
18 Act and the General Permit.

19 14. Members of CSPA reside in California and use and enjoy California's numerous rivers
20 for recreation and other activities. Members of CSPA use and enjoy the Impacted Waters, into which
21 Defendant has caused, is causing, and will continue to cause, pollutants to be discharged. Members of
22 CSPA use these areas to fish, sail, boat, kayak, swim, bird watch, view wildlife, and engage in scientific
23 study, including monitoring activities, among other things. Defendant's discharges of pollutants
24 threaten or impair each of those uses or contribute to such threats and impairments. Thus, the interests
25 of CSPA's members have been, are being, and will continue to be adversely affected by Defendant's
26 ongoing failure to comply with the Clean Water Act. The relief sought herein will redress the harms to
27 Plaintiff caused by Defendant's activities because that relief will significantly reduce pollution discharged
28

1 from Defendant's Facility into the Impacted Waters.

2 15. Continuing commission of the acts and omissions alleged above will irreparably harm
3 Plaintiff and the citizens of the State of California, for which harm they have no plain, speedy or adequate
4 remedy at law.

5 **IV. LEGAL BACKGROUND**

6 **A. Clean Water Act**

7 16. Congress enacted the CWA to "restore and maintain the chemical, physical, and
8 biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). The CWA establishes an "interim
9 goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife
10 and provides for recreation in and on the water" 33 U.S.C. § 1251(a)(2). To these ends, Congress
11 developed both a water quality-based and a technology-based approach to regulating discharges of
12 pollutants from point sources into waters of the United States.

13 17. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant
14 from a point source into waters of the United States, unless such discharge is in compliance with various
15 enumerated sections of the Act. Among other things, Section 301(a) prohibits both discharges not in
16 conformance with a NPDES permit, such as discharges without a NPDES permit issued pursuant to
17 Section 402 of the Act (33 U.S.C. § 1342) or discharges that violate the terms of an NPDES permit.

18 18. The term "discharge of pollutants" means "any addition of any pollutant to navigable
19 waters from any point source." 33 U.S.C. § 1362(12). Pollutants are defined to include, among other
20 examples, industrial waste, chemical wastes, biological materials, heat, rock, and sand discharged into
21 water. 33 U.S.C. § 1362(6).

22 19. A "point source" is defined as "any discernible, confined and discrete conveyance,
23 including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are
24 or may be discharged." 33 U.S.C. § 1362(14).

25 20. "Navigable waters" means "the waters of the United States." 33 U.S.C. § 1362(7).
26 Waters of the United States includes, among others things, waters that are, were, or are susceptible to
27 use in interstate commerce, and tributaries to such waters. 40 C.F.R. § 230.3 (2015). Section 402 of the
28

1 Act, 33 U.S.C. § 1342, establishes the NPDES program, a permitting program that regulates the
 2 discharge of pollutants into waters of the United States. Section 402(p) establishes a framework for
 3 regulating municipal and industrial storm water discharges under the NPDES program, 33 U.S.C. §
 4 1342(p), and, specifically, requires an NPDES permit for storm water discharges associated with
 5 industrial activity. *Id.* § 1342(p)(2)(B). Section 402 authorizes states with approved NPDES permit
 6 programs to regulate industrial storm water discharges, through individual permits issued to dischargers
 7 and/or through the issuance of a single, statewide general permit applicable to all industrial storm water
 8 dischargers. 33 U.S.C. § 1342(b).

9 21. Section 505(a)(1) provides for citizen enforcement actions against any “person,”
 10 including individuals, corporations, or partnerships, 33 U.S.C. § 1362(5), for violations of NPDES
 11 permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. §1365(a)(1) (authorizing
 12 actions against any person alleged to be in violation of an effluent standard or limitation); *id.* § 1365(f)
 13 (defining “effluent limitation” broadly to include “a permit or condition thereof issued under [section
 14 402] of this title,” and “any unlawful act under subsection (a) of [section 301] of this title”).

15 22. An action for injunctive relief under the Act is authorized by 33 U.S.C. § 1365(a).
 16 Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day for
 17 violations occurring after January 12, 2009, pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§
 18 1319(d), 1365, and 40 C.F.R. §§ 19.1–19.4 (2008).

19 **B. State Regulations**

20 23. The Act requires States to promulgate water quality standards. *See* 33 U.S.C. §§ 1313(a)-
 21 (c). Water quality standards consist of both “designated uses” for a body of water and a set of “criteria”
 22 specifying the maximum concentration of pollutants that may be present in the water without impairing
 23 its suitability for designated uses. 33 U.S.C. § 1313(c)(2)(A). The Act requires States to assess whether
 24 these water quality standards are being met.

25 24. The Russian River is heavily degraded from pollutant loading. This is officially
 26 recognized by the EPA, the State Board, and the Regional Board, which has placed the waterbody on the
 27 CWA section 303(d) list of waters that are so polluted that they do not meet applicable water quality
 28

standards. The Regional Board's Water Quality Control Plan for the North Coast Region (hereafter referred to as the "Basin Plan") is the master policy document setting forth the legal, technical, and programmatic bases of water quality regulation in the Region. Among other things, the Basin Plan includes the water quality objectives needed to protect the designated beneficial water uses. The Basin Plan sets forth narrative water quality objectives for sediment, settleable and suspended materials, as well as narrative objectives for preventing the impairment of water quality with oil sheens, turbidity, or other nuisance conditions. The Basin Plan also includes numeric water quality standards for pH, dissolved oxygen and toxic pollutants as well as site specific objectives for certain pollutants of concern such as aluminum, arsenic, cadmium, chromium, lead, mercury, nitrate, endrin, benzene, 1,2-dibromo-3-chloropropane, 1,1-dichloroethane, 1,2-dichloroethane, ethylbenzene, heptachlor, and 1,1,2,2-tetrachloroethane.

25. In addition, a rule promulgated by EPA known as the California Toxics Rule ("CTR"), discussed further below, sets Water Quality Standards ("WQS") for 126 toxic priority pollutants in California's rivers, lakes, enclosed bays, and estuaries. The CTR applies to the Impacted Waters, and includes limits for several toxic metals, including antimony, arsenic, beryllium, cadmium, chromium, copper, lead, mercury, nickel, selenium, silver, thallium, and zinc.

C. California Industrial Storm Water General Permit

26. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of EPA has authorized California's State Board to issue NPDES permits in California, including general NPDES permits.

27. The State Board elected to issue a statewide general permit for industrial discharges. The State Board issued the General Permit on or about November 19, 1991, modified the General Permit on or about September 17, 1992, and reissued the General Permit on April 17, 1997 and again on April 1, 2014 (effective July 1, 2015), pursuant to Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

28. Facilities discharging, or having the potential to discharge, storm water associated with industrial activity that have not obtained an individual NPDES permit must apply for coverage under the State's General Permit by filing a Notice of Intent ("NOI"). The General Permit requires facilities to file

1 their NOIs before the initiation of industrial operations.

2 29. Once regulated by an NPDES permit, facilities must strictly comply with all of the terms
3 and conditions of that permit. A violation of the General Permit is a violation of the Act. *See* General
4 Permit, Section XXI.A.

5 30. In order to discharge storm water lawfully in California, industrial dischargers must
6 comply with the terms of the General Permit or have obtained and complied with an individual NPDES
7 permit.

8 31. The General Permit contains three primary and interrelated categories of requirements: 1)
9 discharge prohibitions; 2) Storm Water Pollution Prevention Plan ("SWPPP") requirements; and 3)
10 monitoring and reporting requirements, including the requirement to prepare an annual report.

11 32. Discharge Prohibition III.C of the General Permit prohibits storm water discharges and
12 authorized non-storm water discharges that cause or threaten to cause pollution, contamination or
13 nuisance as defined in section 13050 of the California Water Code.

14 33. Receiving Water Limitation VI.A of the General Permit prohibits storm water discharges
15 that cause or contribute to an exceedance of any applicable water quality standards in any affected
16 receiving water.

17 34. Receiving Water Limitation VI.B of the General Permit prohibits storm water discharges
18 to any surface or ground water that adversely impact human health or the environment.

19 35. Effluent Limitation V.A of the General Permit requires dischargers to reduce or prevent
20 pollutants in their storm water discharges through implementation of the Best Available Technology
21 Economically Achievable ("BAT") for toxic and nonconventional pollutants and the Best Conventional
22 Pollutant Control Technology ("BCT") for conventional pollutants.

23 36. EPA has established Benchmark Levels as guidelines for determining whether a facility
24 discharging industrial storm water has implemented the requisite BAT and BCT standards. 65 Fed. Reg.
25 64746, 64767 (Oct. 30, 2000). The following benchmarks have been established for pollutants
26 discharged by Defendant: Total Suspended Solids ("TSS") – 100 mg/L; Oil & Grease ("O&G") – 15.0
27 mg/L; Zinc - .11 mg/L (hardness dependent); and, Chemical Oxygen Demand ("COD") – 120 mg/L.
28

1 37. The Regional Board has established water quality standards for the Impacted Waters in
2 the Basin Plan.

3 38. The Basin Plan includes a toxicity standard which states that “[a]ll waters shall be
4 maintained free of toxic substances in concentrations that are toxic to or that produce detrimental
5 physiological responses in, human, plant, animal, or aquatic life.” 3-4.00 Basin Plan.

6 39. The Basin Plan provides that “[w]aters designated for use as domestic or municipal supply
7 (MUN) shall not contain concentrations of chemical constituents in excess of the limits specified in [22
8 C.C.R. §§ 64435 and 64444.5].” 3-5.00 Basin Plan. The Russian River is impaired for sediment,
9 aluminum, and temperature.

10 40. EPA issued the CTR in 2000, establishing numeric receiving water limits for certain toxic
11 pollutants in California surface waters. 40 C.F.R. § 131.38 (2013). The CTR establishes the following
12 applicable numeric limit for freshwater surface waters: Arsenic – 0.34 mg/L; Cadmium – 0.0043 mg/L;
13 Chromium (III) – 0.55 mg/L; Chromium (VI) – 0.016 mg/L; Copper – 0.013 mg/L; Lead – 0.065 mg/L;
14 Nickel - 0.47 mg/L; Silver – 0.0034 mg/L; and, Zinc – 0.12 mg/L.

15 41. The General Permit requires dischargers to develop and implement a site-specific
16 SWPPP. General Permit, Section X.A. The SWPPP must include, among other elements: (1) the
17 facility name and contact information; (2) a site map; (3) a list of industrial materials; (4) a description
18 of potential pollution sources; (5) an assessment of potential pollutant sources; (6) minimum BMPs; (7)
19 advanced BMPs, if applicable; (8) a monitoring implementation plan; (9) an annual comprehensive
20 facility compliance evaluation; and (10) the date that the SWPPP was initially prepared and the date of
21 each SWPPP amendment, if applicable.

22 42. Dischargers must revise their SWPPP whenever necessary and certify and submit via the
23 Regional Board’s Storm Water Multiple Application and Report Tracking System (“SMARTS”) their
24 SWPPP within 30 days whenever the SWPPP contains significant revisions(s); and, certify and submit
25 via SMARTS their SWPPP not more than once every three (3) months in the reporting year for any non-
26 significant revisions. General Permit, Section X.B.

27 43. Dischargers must implement the minimum BMPs identified in Section X.H.1. of the
28

1 General Permit. In addition to the minimum BMPs identified in Section X.H.1, advanced BMPs must
2 be implemented if necessary to reduce or prevent discharges of pollutants in storm water dischargers in a
3 manner that reflects best industry practice. General Permit, Section X.H.2.

4 44. Special Conditions Section XX.B of the General Permit require a discharger to prepare
5 and submit documentation to the Regional Board upon determination that storm water discharges are in
6 violation of Receiving Water Limitations, Section VI. The documentation must describe changes the
7 discharger will make to its current BMPs in order to prevent or reduce any pollutant in its storm water
8 discharges that is causing or contributing to an exceedance of water quality standards. General Permit,
9 Section XX.B.

10 45. Section XV of the General Permit requires an annual evaluation of storm water controls
11 including the preparation of an evaluation report and implementation of any additional measures in the
12 SWPPP to respond to the monitoring results and other inspection activities within 90 days of the annual
13 evaluation.

14 46. The General Permit requires dischargers to eliminate all non-storm water discharges to
15 storm water conveyance systems other than those specifically set forth in Section IV of the General
16 Permit unless authorized by another NPDES permit. General Permit, Section III. B.

17 47. The General Permit requires dischargers to implement a Monitoring Implementation
18 Plan. General Permit, Section X.I. As part of their monitoring plan, dischargers must identify all storm
19 water discharge locations. General Permit, Section X.I.2. Dischargers must then conduct monthly
20 visual observations of each drainage area, as well as visual observations during discharge sampling
21 events. General Permit, Section XI.A.1 and 2. Dischargers must also collect and analyze storm water
22 samples from two (2) storm events within the first half of each reporting year (July 1 to December 31)
23 and two (2) storm events during the second half of each reporting year (January 1 to June 30). General
24 Permit, Section XI.B. Section XI.B requires dischargers to sample and analyze during the wet season
25 for basic parameters such as pH, total suspended solids ("TSS") and oil and grease ("O&G"), certain
26 industry-specific parameters, and any other pollutants likely to be in the storm water discharged from the
27 facility base on the pollutant source assessment. General Permit, Section XI.B.6.

48. Dischargers must submit all sampling and analytical results via SMARTS within thirty (30) days of obtaining all results for each sampling event. Section XI.B.11. Sampling results must be compared to the two types of Numeric Action Level (“NAL”) values set forth at Table 2 of the General Permit. General Permit, Section XII. An annual NAL exceedance occurs when the average of the results for a parameter for all samples taken within a reporting year exceeds the annual NAL value. General Permit, Section XII.A.1. An instantaneous NAL exceedance occurs when two (2) or more results from samples taken for any single parameter within a reporting year exceed the instantaneous maximum NAL value. General Permit, Section XII.A.2. If a discharger has an NAL exceedance during a reporting year, the discharger’s status changes to Level 1 status under the General Permit and the discharger must comply with the requirements set forth for Level 1 status operators set forth at Section XII.C. The discharger’s status shall change to Level 2 status if sampling results indicated an NAL exceedance for a parameter while the discharger is in Level 1 status. If a discharger becomes Level 2 status it must comply with the obligations set forth at Section XII.D of the General Permit.

49. Dischargers must submit an Annual Report no later than July 15th following each reporting year, certifying compliance with the General Permit and/or an explanation for any non-compliance. General Permit, Section XVI.

V. STATEMENT OF FACTS

50. The Facility is an approximately 176-acre saw mill. A site map of the Facility is attached as **Exhibit B**. Defendant’s primary industrial activities at the Facility include log storage and handling, milling of lumber, lumber planing, fenceline operations, wood surface protection, lumber drying, lumber storage and shipping, maintenance of the manufacturing and rolling stock equipment and systems, and wood treating. Most of these industrial activities occur outside in areas that are exposed to storm water and storm flows due to the lack of overhead coverage, functional berms, and other storm water controls.

51. The primary industrial activities at the Facility fall under Standard Industrial Classification (“SIC”) Code 2421 (“Sawmills and Planing Mills, General”).

52. Additionally, the Facility’s wood treating activities at the Facility are described under a secondary SIC Code, 2491 (“Wood Preserving”).

1 53. Defendant collects and discharges storm water associated with industrial activities at the
2 Facility through at least twenty-three (23) discharge points into the Russian River and into Hensley
3 Creek, which ultimately drains into the Russian River. Hensley Creek and the Russian River are waters
4 of the United States within the meaning of the Clean Water Act.

5 54. On information and belief, Defendant first submitted a Notice of Intent to comply with the
6 General Permit on or about April 13, 2010. The Facility was assigned the WDID number 1 231022593.

7 55. Defendant filed a SWPPP, as required by the General Permit, with the Regional Board.

8 56. Under the General Permit, Defendant has continually sampled storm water discharges from
9 the Facility and found levels of pollutants in the samples that exceeded on various occasions both EPA's
10 benchmarks and the CTR values. This information was reported to the Regional Board, as required by
11 the General Permit.

12 57. According to Defendant's self-monitoring reports submitted to the Regional Board,
13 Defendant has measured discharges containing levels of TSS, O&G, Zinc, and COD in excess of the
14 EPA Benchmark Values on at least one hundred and twenty (120) occasions since January 4, 2012.

15 58. Self-monitoring reports filed pursuant to an NPDES permit that report exceedances of permit
16 limitations constitute "conclusive evidence" of violations of the permit and the Act. *Sierra Club v.*
17 *Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988), *rev'd on other grounds*, 485 U.S. 931, *amended by* 853
18 F.2d 667.

19 59. Plaintiff is informed and believes, and thereupon alleges, that since at least March 31, 2010,
20 Defendant has consistently discharged storm water and non-storm water containing impermissible levels
21 of TSS, O&G, Zinc, and COD and other pollutants associated with Defendant's industrial operations
22 into the waters of Hensley Creek and Ackerman Creek, both of which drain into the Russian River,
23 without complying with the terms of the General Permit.

24 60. According to Defendant's self-monitoring reports, since at least January 4, 2012, Defendant
25 has known that storm water discharged from the Facility contains concentrations of: TSS in excess of
26 EPA Benchmark Value of 100 mg/L; O&G in excess of EPA Benchmark Value of 15.0 mg/L; Zinc in
27 excess of EPA Benchmark Value of 0.11 mg/L; COD in excess of EPA Benchmark Value of 120 mg/L;
28

1 and pH outside of EPA Benchmark range of 6.0-9.0 mg/L.

2 61. On at least thirty-three (33) documented occasions since January 4, 2012, the levels of TSS
3 detected by Defendant in the storm water discharged from its Facility exceeded the Benchmark Value of
4 100 mg/L for TSS.

5 62. On at least one (1) documented occasions since January 4, 2012, the levels of O&G detected
6 by Defendant in the storm water discharged from its Facility exceeded the Benchmark Value of 15.0
7 mg/L for O&G.

8 63. On at least twenty-nine (29) documented occasions since January 4, 2012, the levels of Zinc
9 detected by Defendant in the storm water discharged from its Facility exceeded the Benchmark Value of
10 0.11 mg/L for Zinc.

11 64. On at least fifty-nine (59) documented occasions since January 4, 2012, the levels of COD
12 detected by Defendant in the storm water discharged from its Facility exceeded the Benchmark Value of
13 120 mg/L for COD.

14 65. On at least three (3) document occasions since January 4, 2012, the levels of pH detected by
15 Defendant in the storm water discharged from its Facility fell outside the Benchmark range of 6.0-9.0
16 mg/L for pH.

17 66. The Facility's exceedances of EPA Benchmarks provided above indicate that Defendant has
18 not implemented BAT and BCT at the Facility for its discharges of TSS, O&G, Zinc and COD.

19 67. Plaintiff is informed and believes that Defendant's storm water controls, to the extent any
20 exist, fail to achieve BAT and BCT standards.

21 68. The management practices at the Facility are wholly inadequate to prevent the sources of
22 contamination described above from causing the discharge of pollutants to waters of the United States
23 and fail to meet BAT and BCT standards.

24 69. Information available to Plaintiff indicates that as a result of these practices, storm water
25 containing pollutants harmful to fish, plant and bird life, and human health are being discharged from
26 the Facility directly to the Impacted Waters during significant rain events.

27 70. Information available to Plaintiff indicates that Defendant has not fulfilled the requirements
28

1 set forth in the General Permit for discharges from the Facility due to the continued discharge of
2 contaminated storm water.

3 71. Plaintiff is informed and believes, and thereupon alleges, that Defendant has failed to
4 develop and implement an adequate Storm Water Pollution Prevention Plan at the Facility.

5 72. Plaintiff is informed and believes, and thereupon alleges, that Defendant has failed to
6 monitor all of the storm water outfalls at the Facility, as required by the Permit. Defendant's SWPPP
7 does not require or allow Defendant to take representative samples. Defendant's failure to designate,
8 and take samples from, every Facility discharge point is a violation of the Permit.

9 73. Plaintiff is informed and believes, and thereupon alleges, that significant materials associated
10 with past industrial activity including pentachlorophenol remain at the Facility. During storm events,
11 these pollutants mix with storm water and are transported, through a series of conveyances, to discharge
12 points along Hensley Creek and Russian River.

13 74. Plaintiff is informed and believes, and thereupon alleges, that Defendant has used testing
14 method SM 5220D for testing COD samples.

15 75. Plaintiff is informed and believes, and thereupon alleges, that Defendant has contributed to
16 the impairment of the Russian River by discharging Total Suspended Solids in excess of the Numeric
17 Action Levels.

18 76. Plaintiff is informed and believes, and thereupon alleges, that Defendant has failed to
19 develop and implement adequate storm water monitoring, reporting and sampling programs at the
20 Facility. Plaintiff is informed and believes, and thereupon alleges, that Defendant has not sampled with
21 adequate frequency, has not sampled all discharge points, has not analyzed the storm water samples
22 collected at the Facility for all of the required pollutant parameters, and has not used the correct test
23 methods to analyze their storm water samples. In particular, among other shortcomings in Defendant's
24 monitoring program, Defendant has not sampled those discharges at its facility that are associated with
25 its wood preserving operations for concentrations of arsenic and copper.

26 77. Plaintiff is informed and believes, and thereupon alleges, that all of the violations alleged in
27 this Complaint are ongoing and continuing.

1 **VI. CLAIMS FOR RELIEF**

2 **FIRST CLAIM FOR RELIEF**

3 **Failure to Develop and Implement an Adequate**
4 **Storm Water Pollution Prevention Plan For the Facility**
5 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

6 78. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set
7 forth herein.

8 79. Section X of the General Permit requires dischargers of storm water associated with
9 industrial activity to develop and implement an adequate SWPPP prior to commencement of industrial
10 activities.

11 80. Defendant has failed to develop and implement an adequate SWPPP for the Facility.
12 Defendant's ongoing failure to develop and implement an adequate SWPPP for the Facility is evidenced
13 by, *inter alia*, Defendant's outdoor storage of industrial materials without appropriate best management
14 practices; the failure to identify all discharge locations; the lack of specificity and detail required by the
15 General Permit; the failure to keep the SWPPP updated with a log to mark additions; the continued
16 exposure of significant quantities of industrial materials to storm water flows; the failure to either treat
17 storm water prior to discharge or to implement effective containment practices; and the continued
18 discharge of storm water pollutants from the Facility at levels in excess of EPA benchmark values and
19 other applicable standards.

20 81. Defendant has further failed to update the Facility's SWPPP in response to the analytical
21 results of the Facility's storm water monitoring as required by the General Permit. General Permit,
22 Sections X.B.1 and X.C.1.b. Defendant continues to violate the Act each day that it fails to develop and
23 fully implement an adequate SWPPP for the Facility. These violations are ongoing and continuous.

24 82. Each day that Defendant has failed to develop and implement an adequate SWPPP for the
25 Facility in violation of the General Permit is a separate and distinct violation of Section 301(a) of the Act,
26 33 U.S.C. § 1311(a). Defendant is subject to civil penalties for each and every violation of the Act since
27 January 4, 2012. *See* 33 U.S.C. §§1319 (d), 1365; 40 C.F.R. §19.4 (2008).

SECOND CLAIM FOR RELIEF

**Failure to Develop and Implement the Best Available
And Best Conventional Treatment Technologies at the Facility
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

83. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

84. The General Permit's SWPPP requirements and Effluent Limitation V.A. require dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants.

85. Defendant has failed to implement BAT and BCT at the Facility for its discharges of Total Suspended Solids, Oil and Gas, Zinc, Chemical Oxygen Demand, and pH in violation of Effluent Limitation V.A. of the General Permit.

86. Defendant's ongoing failure to implement BAT and BCT at the Facility is evidenced by, *inter alia*, Defendant's chronic exceedances of EPA benchmarks.

87. Each day that Defendant has failed to develop and implement BAT and BCT at the Facility in violation of the General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

88. Defendant continues to be in violation of the BAT and BCT requirements each day that it fails to develop and fully implement BMPs meeting the BAT and BCT standards. These violations are ongoing and continuous.

89. Defendant has been in violation of the BAT and BCT requirements at the Facility every day since at least January 4, 2012. Defendant is subject to civil penalties for each and every violation of the Act since January 4, 2012. *See* 33 U.S.C. §§1319 (d), 1365; 40 C.F.R. §19.4 (2008).

THIRD CLAIM FOR RELIEF

**Failure to Develop and Implement an Adequate
Monitoring Implementation Plan for the Facility
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

1 90. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set
2 forth herein.

3 91. Section X.I and Section XI. of the General Permit require dischargers of storm water associated
4 with industrial activity to develop and implement a monitoring implementation plan (including, among
5 other things, sampling and analysis of discharges) prior to commencement of industrial activities.

6 92. Defendant has failed to develop and implement an adequate monitoring implementation plan
7 for the Facility. Defendant's ongoing failure to develop and implement adequate monitoring and
8 reporting programs are evidenced by, *inter alia*, its continuing failure to collect and analyze storm water
9 samples from all discharge locations, its continuing failure to analyze all storm water samples for all
10 pollutants required by the applicable SIC Code, its continuing failure to analyze storm water samples for
11 pollutants likely to be present in the Facility's storm water discharges in significant quantities and other
12 pollutants as the General Permit requires, and its continuing failure to use the correct test methods to
13 analyze storm water samples. For example, Defendant has not sampled levels of arsenic and copper for
14 those discharges at its facility that are associated with its wood preserving operations, in violation of
15 Monitoring provision XI.B(d) of the permit, and Defendant has not used the test method SM 5200C for
16 analyzing samples of COD, in violation of Section XI.B.7 of the General Permit.

17 93. Defendant has failed to develop and implement an adequate monitoring and reporting
18 program for the Facility in each day since at least January 4, 2012. These violations are ongoing and
19 continuous.

20 94. Each day of violation of the General Permit is a separate and distinct violation of Section
21 301(a) of the Act, 33 U.S.C. §1311(a). Defendant is subject to civil penalties for each and every
22 violation of the Act since January 4, 2012. *See* 33 U.S.C. §§1319 (d), 1365; 40 C.F.R. §19.4 (2008).

23 **FOURTH CLAIM FOR RELIEF**

24 **Failure to Complete Required Exceedance Response Actions** 25 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

26
27 95. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth
28

1 herein.

2 96. Section XII.A of the General Permit requires dischargers to compare the results of their
3 sampling to the two types of Numeric Action Level (“NAL”) values in Table 2 of the General Permit to
4 determine, for each applicable parameter, whether either type of NAL has been exceeded. If sampling
5 results indicate that a NAL is exceeded, the discharger enters “Level 1 status” for that parameter. *Id.* §
6 XII.C.

7 97. By October 1 following the commencement of Level 1 status for any parameter, the
8 discharger shall complete an evaluation, with the assistance of a Qualified Industrial Storm Water
9 Practitioner (“QISP”), of the industrial pollutant sources at the facility that are or may be related to the
10 NAL exceedance(s) and identify in the evaluation the corresponding BMPs in the SWPPP and any
11 additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances. *Id.* § XII.C.1.

12 98. Based on the above evaluation, the discharger shall, no later than January 1 following the
13 commencement of Level 1 status: revise the SWPPP as necessary and implement any additional BMPs
14 identified in the evaluation; certify and submit via SMARTS a Level 1 Exceedance Response Action
15 (“ERA”) Report, prepared by a QISP, that includes a summary of the evaluation and a detailed
16 description of the SWPPP revisions and any additional BMPs for each parameter that exceeded an NAL;
17 and certify and submit via SMARTS the QISP’s identification number, name, and contact information.
18 *Id.* § C.2.

19 99. Defendant commenced Level 1 status for TSS and COD on July 1, 2016.

20 100. Defendant did not complete an adequate evaluation as required by Section XII.C.1 of the
21 2015 General Permit by October 1, 2016. The evaluation fails to identify “the corresponding BMPs in
22 the SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future NAL
23 exceedances” and to comply with the requirements of the 2015 General Permit. 2015 General Permit,
24 Section XII.C.1.

25 101. Defendant did not submit to SMARTS a Level 1 ERA Report that complies with the
26 requirements of Section XII.C.2 of the 2015 General Permit. The Level 1 ERA Report dated December
27 30, 2016 and uploaded to SMARTS by Defendant fails to include an adequate “summary of the Level 1
28

1 ERA Evaluation” required in subsection XII.C.1 of the 2015 General Permit. Specifically, the report
 2 summarizes what documents and data were reviewed for the evaluation, but provides no meaningful
 3 evaluation of what BMPs need improvement and how they could be improved. Although the report
 4 describes the Facility’s drainage areas at some length, the entire discussion lacks “a detailed description
 5 of the SWPPP revisions and any additional BMPs for each parameter that exceeded an NAL.”

6 102. Each day Defendant failed to properly complete the evaluation is a violation of the
 7 General Permit. Defendant has been in violation of this requirement every day since October 2, 2016.
 8 In addition, each day Defendant failed to complete the Level 1 ERA Report is a violation of the General
 9 Permit. Defendant has been in violation of this requirement every day since January 2, 2016.

10 103. Each day of violation of the General Permit is a separate and distinct violation of Section
 11 301(a) of the Act, 33 U.S.C. §1311(a). Defendant is subject to civil penalties for each and every
 12 violation of the Act since January 4, 2012. *See* 33 U.S.C. §§1319 (d), 1365; 40 C.F.R. §19.4 (2008).

13 14 **FIFTH CLAIM FOR RELIEF**

15 **Discharges of Contaminated Storm Water From The Facility** 16 **in Violation of the Permit’s Water-Quality Based Conditions and the Act** 17 **(Violations of 33 U.S.C. §§ 1311(a), 1342)**

18 104. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set
 19 forth herein.

20 105. Receiving Water Limitations VI.A and VI.B of the General Permit require that storm water
 21 discharges and authorized non-storm water discharges shall not adversely impact human health or the
 22 environment, and shall not cause or contribute to a violation of any water quality standards in any affected
 23 receiving water. Discharge Prohibition III.C of the General Permit requires that storm water discharges
 24 and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or
 25 nuisance.

26 106. Plaintiff is informed and believes, and thereupon alleges, that since at least January 4, 2012,
 27 Defendant has been discharging polluted storm water from the Facility into Hensley Creek and Ackerman
 28

1 Creek, which ultimately drain to the Russian River, in violation of the General Permit.

2 107. During every significant rain event, storm water flowing over and through materials at the
3 Facility becomes contaminated with pollutants, flowing untreated from the Facility directly into Hensley
4 Creek and Ackerman Creek, then to the Russian River.

5 108. Plaintiff is informed and believes, and thereupon alleges, that these discharges of
6 contaminated storm water are causing pollution and contamination of waters of the United States in
7 violation of Discharge Prohibition III.C of the General Permit.

8 109. Plaintiff is informed and believes, and thereupon allege, that these discharges of
9 contaminated storm water are adversely affecting human health and the environment in violation of
10 Receiving Water Limitations VI.A and VI.B of the General Permit.

11 110. Plaintiff is informed and believes, and thereupon alleges, that these discharges of
12 contaminated storm water are contributing to the violation of the applicable water quality standards in the
13 Statewide Water Quality Control Plan, the applicable Regional Board's Basin Plan, and/or the CTR, in
14 violation of Receiving Water Limitation VI.A of the General Permit because Defendant's storm water
15 discharges contain high levels of suspended solids which contribute to the Russian River's sediment
16 impairment.

17 111. Plaintiff is informed and believes, and thereupon alleges, that on every day with significant
18 rainfall since January 4, 2012, Defendant has discharged and continues to discharge polluted storm water
19 from the Facility in violation of the General Permit. These violations are ongoing and continuous.

20 112. Every day Defendant has discharged and continues to discharge polluted storm water from the
21 Facility in violation of the General Permit is a separate and distinct violation of Section 301(a) of the Act,
22 33 U.S.C. § 1311(a). Defendant is subject to civil penalties for each and every violation of the Act since
23 January 4, 2012. *See* 33 U.S.C. §§1319 (d), 1365; 40 C.F.R. §19.4 (2008).

24 **VII. RELIEF REQUESTED**

25 Wherefore, CSPA respectfully requests that this Court grant the following relief:

26 a. Declare Defendant to have violated and to be in violation of CWA section 301(a), 33
27 U.S.C. § 1311(a), for discharging pollutants from the Facility not in compliance with a permit issued
28

1 pursuant to CWA section 402, 33 U.S.C. § 1342, and for failing to comply with all substantive and
2 procedural requirements of the General Permit and the CWA as alleged herein.

3 b. Enjoin Defendant from discharging pollutants from the Facility and to the surface
4 waters surrounding and downstream from the Facility in violation of the Act and the General Permit;

5 c. Enjoin Defendant from further violating the substantive and procedural requirements
6 of the General Permit and the Act;

7 d. Order Defendant to pay civil penalties of \$37,500 per day per violation for all
8 violations occurring after September 7, 2011, pursuant to Sections 309(d) and 505(a) of the Act, 33
9 U.S.C. §§ 1319(d) and 1365(a) and 40 C.F.R. §§ 19.1–19.4 (2008);

10 e. Order Defendant to take appropriate actions to restore the quality of navigable waters
11 impaired by their activities;

12 f. Award Plaintiff's costs and fees (including reasonable attorney, witness, and
13 consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,

14 g. Award any such other and further relief as this Court may deem appropriate.

15 Dated: March 8, 2017

Respectfully Submitted,

16 LAW OFFICES OF ANDREW L. PACKARD

17 By: /s/ Andrew L. Packard

18 Andrew L. Packard
19 Attorney for Plaintiff
20 CALIFORNIA SPORTFISHING
21 PROTECTION ALLIANCE
22
23
24
25
26
27
28

EXHIBIT A

LAW OFFICES OF
ANDREW L. PACKARD

245 KENTUCKY STREET, SUITE B3, PETALUMA, CA 94952
PHONE (707) 763-7227 FAX (707) 763-9227
INFO@PACKARDLAWOFFICES.COM

January 4, 2017

VIA CERTIFIED MAIL

Rodger Ferguson, Director EHS
Mendocino Forest Products Company, LLC
MFP Ukiah Sawmill
850 Kunzler Ranch Road
Ukiah, CA 95482

Corporation Service Company – Lawyers
Incorporating Service,
Agent for Service of Process
Mendocino Forest Products Company, LLC
1360 19th Hole Drive, Suite 200
Windsor, CA 95492

**Re: NOTICE OF VIOLATIONS AND INTENT TO FILE SUIT UNDER THE
FEDERAL WATER POLLUTION CONTROL ACT (“CLEAN WATER ACT”)
(33 U.S.C. §§ 1251 *et seq.*)**

Dear Mr. Ferguson:

This firm represents California Sportfishing Protection Alliance (“CSPA”) in regard to violations of the Clean Water Act (“the Act”) occurring at Mendocino Forest Products Company, LLC’s (“MFP”) sawmill located at 850 Kunzler Ranch Road, in Ukiah, California (the “Facility”). This letter is being sent to you as the responsible owner, officer and/or operator of the Facility. Unless otherwise noted, Rodger Ferguson and Mendocino Forest Products Company, LLC shall hereinafter be collectively referred to as “MFP.” CSPA is a non-profit association dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of California waters, including the waters into which MFP discharges polluted storm water.

MFP is in ongoing violation of the substantive and procedural requirements of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and National Pollutant Discharge Elimination System (“NPDES”) General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Order No. 92-12-DWQ, Order No. 97-03-DWQ, and Order 2014-0057-DWQ (“General Permit” or “Permit”).¹ On July 1, 2015 the 2015 General Permit went into effect, superseding the 1997 General Permit that was operative between 1997 and June 30, 2015. The 2015 General Permit includes many of the same fundamental requirements and implements many of the same statutory requirements as the 1997 General Permit. Violation of both the 1997 and 2015 General Permit provisions is enforceable under the law. 2015 General Permit, Finding A.6.

¹ MFP submitted a Notice of Intent (NOI) to comply with the General Permit for the Ukiah Facility on or about April 21, 2015.

Notice of Violation and Intent To File Suit
January 4, 2017
Page 2

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects MFP to a penalty of up to \$37,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)) permits prevailing parties to recover costs and fees, including attorneys' fees.

The Clean Water Act requires that sixty (60) days prior to the initiation of a citizen-enforcement action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen enforcer must give notice of its intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the Chief Administrative Officer of the water pollution control agency for the State in which the violations occur. *See* 40 C.F.R. § 135.2. As required by the Act, this letter provides statutory notice of the violations that have occurred, and continue to occur, at the Facility. 40 C.F.R. § 135.3(a). At the expiration of sixty (60) days from the date of this letter, CSPA intends to file suit under Section 505(a) of the Act in federal court against MFP for violations of the Clean Water Act and the Permit.

I. Background.

A. The Clean Water Act.

Congress enacted the CWA in 1972 in order to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251. The Act prohibits the discharge of pollutants into United States waters except as authorized by the statute. 33 U.S.C. § 1311; *San Francisco BayKeeper, Inc. v. Tosco Corp.*, 309 F.3d 1153, 1156 (9th Cir. 2002). The Act is administered largely through the NPDES permit program. 33 U.S.C. § 1342. In 1987, the Act was amended to establish a framework for regulating storm water discharges through the NPDES system. Water Quality Act of 1987, Pub. L. 100-4, § 405, 101 Stat. 7, 69 (1987) (codified at 33 U.S.C. § 1342(p)); *see also Env’tl. Def. Ctr., Inc. v. EPA*, 344 F.3d 832, 840-41 (9th Cir. 2003) (describing the problem of storm water runoff and summarizing the Clean Water Act’s permitting scheme). The discharge of pollutants without an NPDES permit, or in violation of a permit, is illegal. *Ecological Rights Found. v. Pacific Lumber Co.*, 230 F.3d 1141, 1145 (9th Cir. 2000).

Much of the responsibility for administering the NPDES permitting system has been delegated to the states. *See* 33 U.S.C. § 1342(b); *see also* Cal. Water Code § 13370 (expressing California’s intent to implement its own NPDES permit program). The CWA authorizes states with approved NPDES permit programs to regulate industrial storm water discharges through individual permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all industrial storm water dischargers. 33 U.S.C. § 1342(b). Pursuant to Section 402 of the Act, the Administrator of EPA has authorized California’s State Board to issue individual and general NPDES permits in California. 33 U.S.C. § 1342.

B. California’s General Permit for Storm Water Discharges Associated with Industrial Activities

Notice of Violation and Intent To File Suit
January 4, 2017
Page 3

Between 1997 and June 30, 2015, the General Permit in effect was Order No. 97-03-DWQ, which CSPA refers to as the “1997 General Permit.” On July 1, 2015, pursuant to Order No. 2015-0057-DWQ the General Permit was reissued, including many of the same fundamental terms as the prior permit. For purposes of this notice letter, CSPA refers to the reissued permit as the “2015 General Permit.” The 2015 General Permit rescinded in whole the 1997 General Permit, except for the expired permit’s requirement that annual reports be submitted by July 1, 2015, and for purposes of CWA enforcement. 2015 General Permit, Finding A.6.

Facilities discharging, or having the potential to discharge, storm water associated with industrial activities that have not obtained an individual NPDES permit must apply for coverage under the General Permit by filing a Notice of Intent to Comply (“NOI”). 1997 General Permit, Provision E.1; 2015 General Permit, Standard Condition XXI.A. Facilities must file their NOIs before the initiation of industrial operations. *Id.* Facilities must strictly comply with all of the terms and conditions of the General Permit. A violation of the General Permit is a violation of the CWA. The General Permit contains three primary and interrelated categories of requirements: (1) discharge prohibitions, receiving water limitations and effluent limitations; (2) Storm Water Pollution Prevention Plan (“SWPPP”) requirements; and (3) self-monitoring and reporting requirements.

C. MFP’s Ukiah Facility

MFP’s primary industrial activities at the approximately 120-176-acre Facility include log storage and handling, milling of lumber, lumber planing, fenceline operations, wood surface protection, lumber drying, lumber storage and shipping, maintenance of the manufacturing and rolling stock equipment and systems, and wood treating. The industrial activities at the Facility fall under Standard Industrial Classification (“SIC”) Code 2421 (“Sawmills and Planing Mills, General”).

MFP collects and discharges storm water associated with industrial activities at the Facility through at least twenty-three (23) discharge points into Hensley Creek which ultimately drains into the Russian River. Hensley Creek and the Russian River are waters of the United States within the meaning of the Clean Water Act.

The General Permit requires MFP to analyze storm water samples for TSS, pH, and Oil and Grease. 1997 General Permit, Section B.5.c.i; 2015 General Permit, Section XI.B.6. Facilities under SIC Code 2421 must also analyze storm water samples for Chemical Oxygen Demand (“COD”) and Zinc (“Zn”). 1997 General Permit, Tables 1-2; 2015 General Permit Tables 1-2.

II. MFP’s Violations of the Act and Permit.

Based on its review of available public documents, CSPA is informed and believes that MFP is in ongoing violation of both the substantive and procedural requirements of the CWA and the General Permit. These violations are ongoing and continuous. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, MFP is subject to penalties for violations of the Act since January 4, 2012.

Notice of Violation and Intent To File Suit
January 4, 2017
Page 4

A. MFP Discharges Storm Water Containing Pollutants in Violation of the General Permit's Discharge Prohibitions, Receiving Water Limitations and Effluent Limitations.

MFP's storm water sampling results provide conclusive evidence of MFP's failure to comply with the General Permit's discharge prohibitions, receiving water limitations and effluent limitations. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

1. Applicable Water Quality Standards.

The General Permit requires that storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance. 1997 General Permit, Discharge Prohibition A.2; 2015 General Permit, Discharge Prohibition III.C. The General Permit also prohibits discharges that violate any discharge prohibition contained in the applicable Regional Water Board's Basin Plan or statewide water quality control plans and policies. 1997 General Permit, Receiving Water Limitation C.2; 2015 General Permit, Discharge Prohibition III.D. Furthermore, storm water discharges and authorized non-storm water discharges shall not adversely impact human health or the environment, and shall not cause or contribute to a violation of any water quality standards in any affected receiving water. 1997 General Permit, Receiving Water Limitations C.1, C.2; 2015 General Permit, Receiving Water Limitations VI.A, VI.B.

Dischargers are also required to prepare and submit documentation to the Regional Board upon determination that storm water discharges are in violation of the General Permit's Receiving Water Limitations. 1997 General Permit, p. VII; 2015 General Permit, Special Condition XX.B. The documentation must describe changes the discharger will make to its current storm water best management practices ("BMPs") in order to prevent or reduce any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. *Id.*

The California Toxics Rule ("CTR") is an applicable water quality standard under the Permit, violation of which is a violation of Permit conditions. *Cal. Sportfishing Prot. Alliance v. Chico Scrap Metal, Inc.*, 124 F. Supp. 3d 1007, 1021 (E.D. Cal. 2015). CTR establishes numeric receiving water limits for toxic pollutants in California surface waters. 40 C.F.R. § 131.38. The CTR establishes a numeric limit for Zinc of 0.12 mg/L (maximum concentration), which is one of the pollutants discharged by MFP. The *Water Quality Control Plan for the North Coast Region (Revised May 2011)* ("Basin Plan") also sets forth water quality standards and prohibitions applicable to MFP's storm water discharges. The Basin Plan identifies present and potential beneficial uses for the Russian River, which include municipal and domestic water supply, hydropower generation, agricultural supply, industrial service supply, navigation, wildlife habitat, warm freshwater habitat, cold freshwater habitat, warm and cold spawning, and contact and non-contact water recreation.

Notice of Violation and Intent To File Suit
January 4, 2017
Page 5

2. Applicable Effluent Limitations.

Dischargers are required to reduce or prevent pollutants in their storm water discharges through implementation of best available technology economically achievable (“BAT”) for toxic and nonconventional pollutants and best conventional pollutant control technology (“BCT”) for conventional pollutants. 1997 General Permit, Effluent Limitation B.3; 2015 General Permit, Effluent Limitation V.A. Conventional pollutants include Total Suspended Solids, Oil & Grease, pH, Biochemical Oxygen Demand and Fecal Coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. 40 C.F.R. §§ 401.15-16.

Under the General Permit, benchmark levels established by the EPA (“EPA benchmarks”) serve as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite BAT and BCT. *Santa Monica Baykeeper v. Kramer Metals*, 619 F.Supp.2d 914, 920, 923 (C.D. Cal 2009); Final Reissuance of NPDES Storm Water Multi-Sector General Permit for Industrial Activities, 65 Fed. Reg. 64746, 64766 (Oct. 30, 2000); 1997 General Permit, Effluent Limitations B.5-6; 2015 General Permit, Exceedance Response Action XII.A.

The following EPA benchmarks have been established for pollutants discharged by MFP: Total Suspended Solids – 100 mg/L; Oil & Grease – 15.0 mg/L; Zinc² – 0.11 mg/L; and, Chemical Oxygen Demand – 120 mg/L.

3. MFP’s Storm Water Sample Results

The following discharges of pollutants from the Facility have violated the discharge prohibitions, receiving water limitations and effluent limitations of the Permit:

a. Discharge of Storm Water Containing Total Suspended Solids (TSS) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
4/22/16	006	TSS	260	100
3/10/16	017	TSS	140	100
3/10/16	001	TSS	110	100
3/10/16	019	TSS	260	100
3/9/16	002	TSS	420	100
3/9/16	008	TSS	140	100
1/29/16	017	TSS	250	100
11/09/15	002	TSS	120	100
2/26/14	011	TSS	540	100

² The EPA benchmark for Zinc is hardness dependent. Data from the United States Geological Survey California Water Science Center indicates that the average hardness for the Russian River near the Facility is around 83 mg/L Calcium Carbonate. The EPA benchmark for Zinc in the Freshwater Hardness Range of 75 – 99.99 mg/L is 0.11 mg/L.

Notice of Violation and Intent To File Suit

January 4, 2017

Page 6

2/26/14	012	TSS	140	100
2/26/14	004	TSS	540	100
2/26/14	011	TSS	540	100
2/26/14	012	TSS	140	100
2/26/14	017	TSS	1000	100
1/29/14	002	TSS	3200	100
1/29/14	017	TSS	290	100
1/29/14	008	TSS	110	100
9/30/13	003	TSS	9800	100
4/4/13	002	TSS	950	100
4/4/13	003	TSS	740	100
3/6/13	002	TSS	810	100
3/6/13	003	TSS	420	100
2/19/13	002	TSS	780	100
2/19/13	003	TSS	900	100
2/19/13	008	TSS	220	100
1/29/13	002	TSS	3200	100
1/29/13	017	TSS	290	100
1/23/13	002	TSS	5000	100
1/23/13	003	TSS	3800	100
1/23/13	008	TSS	150	100
1/23/13	009	TSS	240	100
1/23/13	012	TSS	200	100
10/12/12	012	TSS	110	100

b. Discharge of Storm Water Containing Zinc (Zn) at Concentrations in Excess of Applicable EPA Benchmark and CTR Values

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)	CTR Criteria (mg/L)
12/8/16	016	Zn	0.13	0.11	0.12
10/27/16	008	Zn	0.34	0.11	0.12
10/24/16	016 Kiln Pipe	Zn	0.17	0.11	0.12
3/10/16	021	Zn	0.13	0.11	0.12
3/10/16	019	Zn	0.34	0.11	0.12
3/10/16	21	Zn	0.13	0.11	0.12
3/9/16	008	Zn	0.36	0.11	0.12
3/9/16	016 Kiln Pipe	Zn	0.13	0.11	0.12
1/29/16	008	Zn	0.22	0.11	0.12
1/29/16	017	Zn	0.13	0.11	0.12
1/6/16	021	Zn	0.13	0.11	0.12
12/30/15	008	Zn	0.25	0.11	0.12
11/09/15	008	Zn	0.20	0.11	0.12
2/26/14	011	Zn	0.37	0.11	0.12

Notice of Violation and Intent To File Suit

January 4, 2017

Page 7

2/26/14	012	Zn	0.70	0.11	0.12
2/26/14	Kiln Pipe	Zn	0.12	0.11	0.12
2/26/14	004	Zn	0.37	0.11	0.12
2/26/14	012	Zn	0.7	0.11	0.12
2/26/14	017	Zn	0.49	0.11	0.12
2/26/14	Kiln	Zn	0.12	0.11	0.12
1/29/14	002	Zn	0.67	0.11	0.12
1/29/14	017	Zn	0.24	0.11	0.12
1/29/14	008	Zn	0.45	0.11	0.12
1/29/14	012	Zn	0.47	0.11	0.12
1/29/14	Kiln	Zn	0.15	0.11	0.12
1/29/13	002	Zn	0.67	0.11	0.12
1/29/13	017	Zn	0.24	0.11	0.12
1/23/13	012	Zn	0.73	0.11	0.12
10/12/12	012	Zn	2.1	0.11	0.12

c. **Discharge of Storm Water Containing Chemical Oxygen Demand (COD) at Concentrations in Excess of Applicable EPA Benchmark Value**

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
10/27/16	008	COD	140	120
10/24/16	018	COD	380	120
10/24/16	022	COD	130	120
10/24/16	015 Kiln Pipe	COD	160	120
10/14/16	016 Kiln Pipe	COD	180	120
10/14/16	015 Kiln Pond	COD	190	120
4/22/16	006	COD	300	120
4/22/16	022	COD	140	120
3/10/16	017	COD	320	120
3/10/16	015 Kiln Pond	COD	130	120
3/10/16	001	COD	400	120
3/10/16	018	COD	390	120
3/10/16	019	COD	450	120
3/9/16	002	COD	350	120
3/9/16	008	COD	220	120
1/29/16	008	COD	180	120
1/29/16	015 Kiln Pond	COD	210	120
1/29/16	017	COD	250	120
1/5/16	023	COD	250	120
11/09/15	002	COD	630	120
2/26/14	011	COD	340	120
2/26/14	012	COD	140	120
2/26/14	004	COD	340	120
2/26/14	011	COD	340	120

Notice of Violation and Intent To File Suit

January 4, 2017

Page 8

2/26/14	012	COD	140	120
2/26/14	017	COD	140	120
1/29/14	002	COD	800	120
1/29/14	017	COD	240	120
1/29/14	008	COD	230	120
1/29/14	012	COD	130	120
11/19/13	002	COD	540	120
11/19/13	008	COD	170	120
9/30/13	003	COD	6100	120
9/30/13	008	COD	160	120
6/25/13	003	COD	1800	120
4/4/13	002	COD	700	120
4/4/13	003	COD	610	120
4/4/13	008	COD	150	120
4/4/13	017	COD	140	120
3/6/13	002	COD	650	120
3/6/13	003	COD	360	120
3/6/13	007	COD	160	120
3/6/13	008	COD	180	120
3/6/13	017	COD	130	120
2/19/13	002	COD	560	120
2/19/13	003	COD	1100	120
2/19/13	007	COD	200	120
2/19/13	008	COD	150	120
2/19/13	017	COD	180	120
1/29/13	002	COD	800	120
1/29/13	017	COD	240	120
1/23/13	002	COD	2200	120
1/23/13	003	COD	3300	120
1/23/13	007	COD	240	120
1/23/13	012	COD	180	120
1/23/13	017	COD	180	120
11/19/13	002	COD	540	120
11/19/13	008	COD	170	120
10/12/12	012	COD	290	120

d. Discharge of Storm Water Containing Oil & Grease (O&G) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
3/9/16	002	O&G	68	15.0

Notice of Violation and Intent To File Suit
January 4, 2017
Page 9

e. Discharge of Storm Water with a pH Outside the Applicable EPA Benchmark Values

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
6/25/13	003	pH	5.5	6.0 - 9.0
2/19/13	007	pH	5.94	6.0 - 9.0
1/23/13	007	pH	4.04	6.0 - 9.0

f. MFP's Sample Results Are Evidence of Violations of the General Permit

MFP's sample results demonstrate violations of the Permit's discharge prohibitions, receiving water limitations and effluent limitations set forth above. CSPA is informed and believes that MFP has known that its storm water contains pollutants at levels exceeding General Permit standards since at least January 4, 2012.

CSPA alleges that such violations occur each time storm water discharges from the Facility. Attachment A hereto, sets forth the specific rain dates on which CSPA alleges that MFP has discharged storm water containing impermissible levels of Total Suspended Solids, Oil & Grease, pH, Zinc, and Chemical Oxygen Demand in violation of the General Permit. 1997 General Permit, Discharge Prohibition A.2, Receiving Water Limitations C.1 and C.2; 2015 General Permit, Discharge Prohibitions III.C and III.D, Receiving Water Limitations VI.A, VI.B.

4. MFP Has Failed to Implement BAT and BCT

Dischargers must implement BMPs that fulfill the BAT/BCT requirements of the CWA and the General Permit to reduce or prevent discharges of pollutants in their storm water discharges. 1997 General Permit, Effluent Limitation B.3; 2015 General Permit, Effluent Limitation V.A. To meet the BAT/BCT standard, dischargers must implement minimum BMPs and any advanced BMPs set forth in the General Permit's SWPPP Requirements provisions where necessary to reduce or prevent pollutants in discharges. *See* 1997 General Permit, Sections A.8.a-b; 2015 General Permit, Sections X.H.1-2.

MFP has failed to implement the minimum BMPs required by the General Permit, including: good housekeeping requirements; preventive maintenance requirements; spill and leak prevention and response requirements; material handling and waste management requirements; erosion and sediment controls; employee training and quality assurance; and record keeping. Permit, Section X.H.1(a-g). MFP has further failed to implement advanced BMPs necessary to reduce or prevent discharges of pollutants in its storm water sufficient to meet the BAT/BCT standards, including: exposure minimization BMPs; containment and discharge reduction BMPs; treatment control BMPs; or other advanced BMPs necessary to comply with the General Permit's effluent limitations. 1997 General Permit, Section A.8.b; 2015 General Permit, Sections X.H.2.

Each day that MFP has failed to develop and implement BAT and BCT at the Facility in violation of the General Permit is a separate and distinct violation of Section 301(a) of the Act,

Notice of Violation and Intent To File Suit
January 4, 2017
Page 10

33 U.S.C. § 1311(a). MFP has been in violation of the BAT and BCT requirements at the Facility every day since at least January 4, 2012.

5. MFP Has Failed to Implement an Adequate Monitoring Implementation Plan.

The General Permit requires dischargers to implement a Monitoring Implementation Plan. 1997 General Permit Section B; 2015 General Permit, Section X.I. As part of their monitoring plan, dischargers must identify all storm water discharge locations. 1997 General Permit Section A.4.b; 2015 General Permit, Section X.I.2. Dischargers must then conduct monthly visual observations of each drainage area, as well as visual observations during discharge sampling events. 1997 General Permit Section B.4 and 8; 2015 General Permit, Section XI.A.1 and 2.

Dischargers must collect and analyze storm water samples from two (2) storm events within the first half of each reporting year (July 1 to December 31) and two (2) storm events during the second half of each reporting year (January 1 to June 3). 2015 General Permit, Section XI.B. Section XI.B requires dischargers to sample and analyze during the wet season for basic parameters such as pH, total suspended solids ("TSS") and oil and grease ("O&G"), certain industry-specific parameters set forth in Table 2 of the General Permit, and other pollutants likely to be in the storm water discharged from the facility based on the pollutant source assessment. 2015 General Permit, Section XI.B.6. Dischargers must submit all sampling and analytical results via SMARTS within thirty (30) days of obtaining all results for each sampling event. 2015 General Permit Section XI.B.11. MFP has failed to develop and implement an adequate Monitoring Implementation Plan. These failures include: failing to analyze samples for all required pollutants (including but not limited to arsenic and copper as required for facilities under SIC Code 2491), failing to sample from all discharge locations and failing to collect samples from the required number of qualifying storm events.

Each day that MFP has failed to develop and implement an adequate Monitoring Implementation Plan is a separate and distinct violation of the Act and Permit. MFP has been in violation of the Monitoring Implementation Plan requirements every day since at least January 4, 2012.

6. MFP Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.

The General Permit requires dischargers to develop and implement a site-specific SWPPP. 1997 General Permit, Section A.1; 2015 General Permit, Section X.A. The SWPPP must include, among other elements: (1) the facility name and contact information; (2) a site map; (3) a list of industrial materials; (4) a description of potential pollution sources; (5) an assessment of potential pollutant sources; (6) minimum BMPs; (7) advanced BMPs, if applicable; (8) a monitoring implementation plan; (9) annual comprehensive facility compliance evaluation; and (10) the date that the SWPPP was initially prepared and the date of each SWPPP amendment, if applicable. *See id.*

Dischargers must revise their SWPPP whenever necessary and certify and submit via the

Notice of Violation and Intent To File Suit
January 4, 2017
Page 11

Regional Board's Storm Water Multiple Application and Report Tracking System ("SMARTS") their SWPPP within 30 days whenever the SWPPP contains significant revisions(s); and, certify and submit via SMARTS for any non-significant revisions not more than once every three (3) months in the reporting year. 2015 General Permit, Section X.B; see also 1997 General permit, Section A.

CSPA's investigation indicates that MFP has been operating with an inadequately developed or implemented SWPPP in violation of General Permit requirements. MFP has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary, resulting in the Facility's numerous effluent limitation violations. Each day MFP failed to develop and implement an adequate SWPPP is a violation of the General Permit. The SWPPP violations described above were at all times in violation of Section A of the 1997 General Permit, and Section X of the 2015 General Permit. MFP has been in violation of these requirements at the Facility every day since at least January 4, 2012.

7. MFP Has Failed to Complete Required Exceedance Response Actions.

The General Permit requires dischargers to compare the results of their sampling, analysis, and reporting to the two types of Numeric Action Level ("NAL") values in Table 2 to determine whether either type of NAL has been exceeded for each applicable parameter. 2015 General Permit, Section XII.A. A discharger's baseline status for any given parameter shall change to Level 1 status if sampling results indicate an NAL exceedance for that same parameter. 2015 General Permit, Section XII.C.

By October 1 following the commencement of Level 1 status for any parameter with sampling results indicating an NAL exceedance, the discharger shall complete an evaluation, with the assistance of a Qualified Industrial Storm water Practitioner ("QISP"), of the industrial pollutant sources at the facility that are or may be related to the NAL exceedance(s) and identify in the evaluation the corresponding BMPs in the SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances. 2015 General Permit, Section XII.C.1.

Based on the above evaluation, the discharger shall, no later than January 1 following the commencement of Level 1 status, revise the SWPPP as necessary and implement any additional BMPs identified in the evaluation, certify and submit via SMARTS a Level 1 ERA Report prepared by a QISP that includes a summary of the level 1 ERA Evaluation and a detailed description of the SWPPP revisions and any additional BMPs for each parameter that exceeded an NAL, and certify and submit via SMARTS the QISP's identification number, name, and contact information. 2015 General Permit, Section XII.C.2.

CSPA's investigation indicates that MFP commenced Level 1 status for TSS and COD on July 1, 2016. MFP has failed to complete an adequate evaluation as required by Section XII.C.1 of the 2015 General Permit by October 1, 2016. The evaluation fails to identify "the corresponding BMPs in the SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances" and to comply with the requirements of the 2015 General Permit. 2015 General Permit, Section XII.C.1.

Notice of Violation and Intent To File Suit
January 4, 2017
Page 12

MFP has also failed to submit to SMARTS a Level 1 ERA Report that complies with the requirements of Section XII.C.2 of the 2015 General Permit. The Level 1 ERA Report dated December 30, 2016 and uploaded to SMARTS by MFP fails to include an adequate “summary of the Level 1 ERA Evaluation” required in subsection XII.C.1 of the 2015 General Permit. Specifically, the report summarizes what documents and data were reviewed for the evaluation, but provides no meaningful evaluation of what BMPs need improvement and how they could be improved. Although the report describes the Facility’s drainage areas at some length, the entire discussion lacks “a detailed description of the SWPPP revisions and any additional BMPs for each parameter that exceeded an NAL.”

Each day MFP failed to properly complete the evaluation is a violation of the 2015 General Permit. MFP has been in violation of this requirement every day since October 2, 2016. In addition, each day MFP failed to complete the Level 1 ERA Report is a violation of the General Permit. MFP has been in violation of this requirement every day since January 2, 2016.

III. Persons Responsible for the Violations.

CSPA puts MFP on notice that they are the persons and entities responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts MFP on formal notice that it intends to include those persons in this action.

IV. Name and Address of Noticing Parties.

The name, address and telephone number of each of the noticing parties is as follows:

Bill Jennings, Executive Director
California Sportfishing Protection Alliance
3536 Rainer Avenue
Stockton, CA 95204
(209) 464-5067

V. Counsel.

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Andrew L. Packard
William N. Carlon
Law Offices Of Andrew L. Packard
245 Kentucky Street, Suite B3
Petaluma, CA 94952
(707) 763-7227
Andrew@PackardLawOffices.com

Reed W. Super
Super Law Group, LLC
180 Maiden Lane, Suite 603
New York, NY 10038
(212) 242-2273
reed@superlawgroup.com

Notice of Violation and Intent To File Suit
January 4, 2017
Page 13

VI. Conclusion

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the CWA against MFP and their agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Andrew L. Packard
Law Offices of Andrew L. Packard
Counsel for California Sportfishing Protection Alliance

Notice of Violation and Intent To File Suit
January 4, 2017
Page 14

SERVICE LIST

VIA CERTIFIED MAIL

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Jared Blumenfeld, Regional Administrator
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Hon. Loretta Lynch
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812

Matthias St. John, Executive Officer
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard Suite A
Santa Rosa, CA 95403

ATTACHMENT A
Notice of Intent to File Suit, MFP
Significant Rain Events,* January 4, 2012– January 4, 2017

January 19, 2012	November 1, 2012	June 25, 2013	September 27, 2014
January 20, 2012	November 8, 2012	June 26, 2013	October 15, 2014
January 21, 2012	November 9, 2012	September 21, 2013	October 20, 2014
January 22, 2012	November 17, 2012	September 30, 2013	October 21, 2014
January 23, 2012	November 18, 2012	November 19, 2013	October 24, 2014
January 26, 2012	November 20, 2012	November 20, 2013	October 25, 2014
February 1, 2012	November 21, 2012	November 21, 2013	October 26, 2014
February 7, 2012	November 28, 2012	December 7, 2013	October 31, 2014
February 8, 2012	November 29, 2012	January 12, 2014	November 1, 2014
February 13, 2012	November 30, 2012	January 29, 2014	November 13, 2014
February 29, 2012	December 1, 2012	January 30, 2014	November 14, 2014
March 1, 2012	December 2, 2012	February 2, 2014	November 20, 2014
March 11, 2012	December 3, 2012	February 3, 2014	November 21, 2014
March 12, 2012	December 4, 2012	February 6, 2014	November 22, 2014
March 13, 2012	December 5, 2012	February 7, 2014	November 28, 2014
March 14, 2012	December 12, 2012	February 8, 2014	November 29, 2014
March 15, 2012	December 16, 2012	February 9, 2014	November 30, 2014
March 16, 2012	December 17, 2012	February 10, 2014	December 1, 2014
March 17, 2012	December 21, 2012	February 13, 2014	December 2, 2014
March 18, 2012	December 22, 2012	February 16, 2014	December 3, 2014
March 21, 2012	December 23, 2012	February 19, 2014	December 4, 2014
March 22, 2012	December 24, 2012	February 27, 2014	December 6, 2014
March 24, 2012	December 26, 2012	February 28, 2014	December 8, 2014
March 25, 2012	December 27, 2012	March 1, 2014	December 9, 2014
March 26, 2012	December 29, 2012	March 3, 2014	December 11, 2014
March 27, 2012	January 6, 2013	March 4, 2014	December 12, 2014
March 28, 2012	January 24, 2013	March 6, 2014	December 15, 2014
March 29, 2012	February 7, 2013	March 10, 2014	December 16, 2014
March 30, 2012	February 8, 2013	March 25, 2014	December 17, 2014
March 31, 2012	February 19, 2013	March 26, 2014	December 18, 2014
April 1, 2012	February 20, 2013	March 27, 2014	December 19, 2014
April 4, 2012	March 6, 2013	March 29, 2014	December 20, 2014
April 12, 2012	March 7, 2013	March 30, 2014	December 21, 2014
April 13, 2012	March 20, 2013	April 1, 2014	December 25, 2014
April 26, 2012	March 21, 2013	April 2, 2014	January 16, 2015
April 27, 2012	March 31, 2013	April 4, 2014	January 17, 2015
May 4, 2012	April 1, 2013	April 5, 2014	January 19, 2015
October 22, 2012	April 4, 2013	April 27, 2014	February 6, 2015
October 23, 2012	April 6, 2013	September 18, 2014	February 7, 2015
October 24, 2012	April 8, 2013	September 25, 2014	February 9, 2015
October 25, 2012	May 28, 2013	September 26, 2014	March 23, 2015

* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

ATTACHMENT A
Notice of Intent to File Suit, MFP
Significant Rain Events,* January 4, 2012– January 4, 2017

March 24, 2015	January 17, 2016	October 27, 2016
April 6, 2015	January 18, 2016	October 28, 2016
April 7, 2015	January 19, 2016	October 29, 2016
April 8, 2015	January 22, 2016	October 30, 2016
April 25, 2015	January 23, 2016	October 31, 2016
May 15, 2015	January 25, 2016	November 1, 2016
July 10, 2015	January 29, 2016	November 12, 2016
September 17, 2015	January 30, 2016	November 16, 2016
October 28, 2015	February 4, 2016	November 19, 2016
November 2, 2015	February 18, 2016	November 20, 2016
November 8, 2015	February 19, 2016	November 23, 2016
November 9, 2015	February 20, 2016	November 26, 2016
November 10, 2015	March 3, 2016	November 27, 2016
November 15, 2015	March 5, 2016	November 28, 2016
November 25, 2015	March 6, 2016	December 8, 2016
December 4, 2015	March 7, 2016	December 9, 2016
December 6, 2015	March 9, 2016	December 10, 2016
December 7, 2015	March 10, 2016	December 11, 2016
December 10, 2015	March 11, 2016	December 14, 2016
December 11, 2015	March 12, 2016	December 15, 2016
December 13, 2015	March 13, 2016	December 16, 2016
December 14, 2015	March 14, 2016	December 23, 2016
December 18, 2015	March 21, 2016	December 24, 2016
December 19, 2015	March 22, 2016	January 3, 2017
December 20, 2015	April 10, 2016	January 4, 2017
December 21, 2015	April 14, 2016	
December 22, 2015	April 22, 2016	
December 23, 2015	April 23, 2016	
December 24, 2015	April 27, 2016	
December 25, 2015	April 28, 2016	
December 28, 2015	May 22, 2016	
December 30, 2015	June 18, 2016	
January 4, 2016	October 3, 2016	
January 5, 2016	October 4, 2016	
January 6, 2016	October 14, 2016	
January 7, 2016	October 15, 2016	
January 9, 2016	October 16, 2016	
January 13, 2016	October 17, 2016	
January 14, 2016	October 18, 2016	
January 15, 2016	October 25, 2016	
January 16, 2016	October 26, 2016	

* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

EXHIBIT B

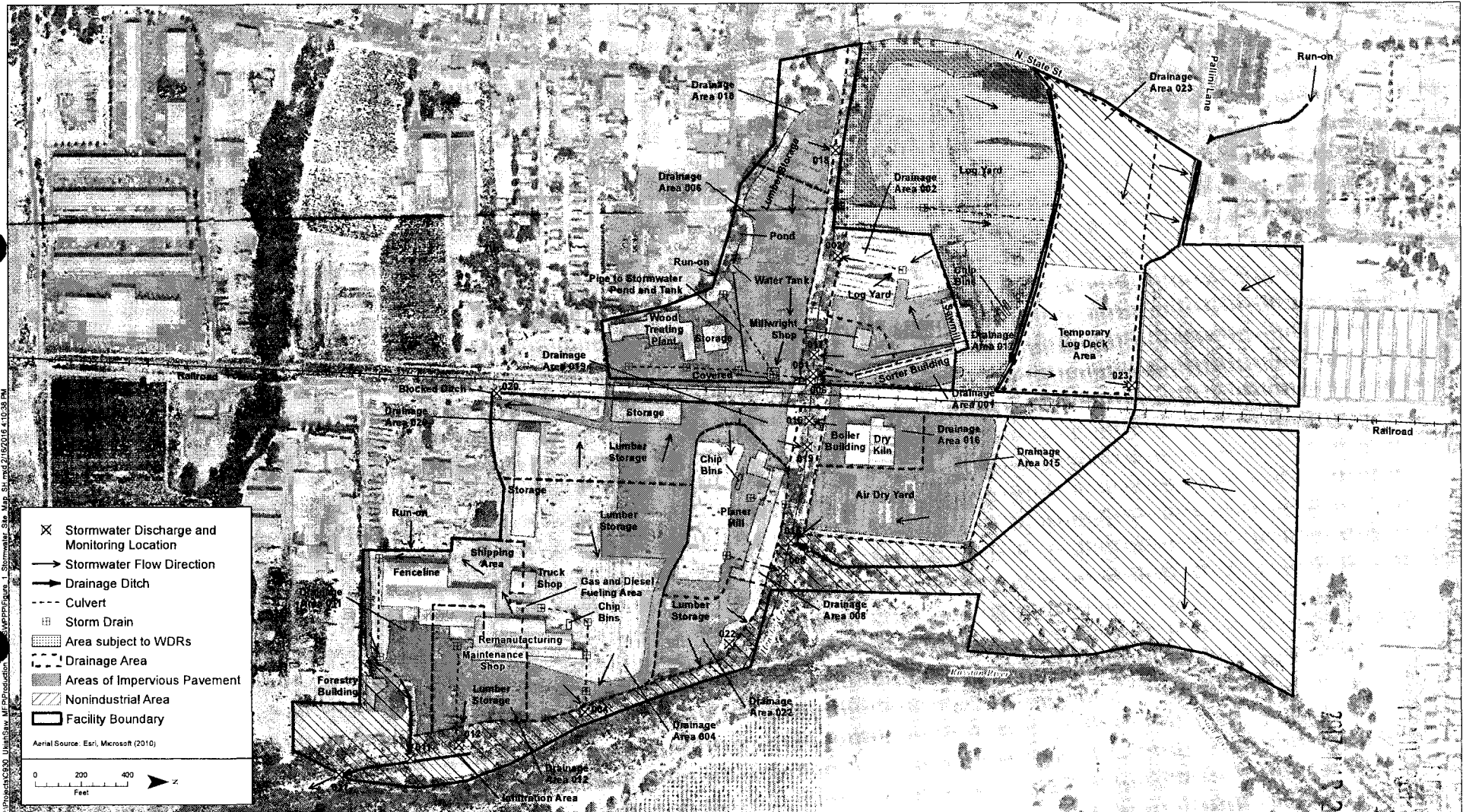


Figure 1.
Stormwater Site Map
Mendocino Forest Products Ukiah Sawmill
850 Kunzler Ranch Road, Ukiah, California

DEPT. OF JUSTICE - ENRD
ENVIRONMENT DIVISION

17 MAR 28 PM 1:15

LAW OFFICES OF
ANDREW L. PACKARD
245 KENTUCKY STREET, SUITE B3, PETALUMA, CA 94952
~~Via Certified Mail~~
Jeff Sessions, Attorney General
U.S. Department of Justice
Citizen Suit Coordinator
950 Pennsylvania Avenue, Room 2615, NW
Washington, DC 20530

F



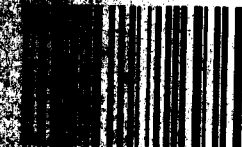
U.S. POSTAGE
\$1.61
FCM LG ENV
94952
Date of sale
03/09/17
06 2500
08259471

USPS® FIRST-CLASS MAIL®

SHIP
TO:

0 lb. 3.90 oz.

DC 20530



(430) 20530

X-RAYED
MAR 15 2017
DOJ MAIL ROOM

